WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
DECEMBER, 2010

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol.

This calendar includes cases that originated in the following counties:

Ashland
Brown
Milwaukee

WEDNESDAY, DECEMBER 1, 2010

9:45 a.m.	10AP321	Brown County Dept. of Human Services v. Brenda B.
10:45 a.m.	09AP1559	Peter S. Boerst v. Mark Henn
1:30 p.m.	{06AP1229	Bryan Casper, et al. v. American Int'l So. Ins. Co., et al.
	{06AP2512	Bryan Casper, et al. v. Nat. Union Fire Ins. Co. of Pittsburgh
	{07AP369	Bryan Casper, et al. v. Nat. Union Fire Ins. Co. of Pittsburgh

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
WEDNESDAY, DECEMBER 1, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a Brown County Circuit Court decision, Judge Timothy A. Hinkfuss, presiding.

2010AP321 Brown County DHS v. Brenda B.

In this termination of parental rights case, the Supreme Court examines a trial court's discretion in denying a motion to withdraw a no contest plea without an evidentiary hearing.

Some background: Brown County filed a petition to terminate Brenda B.'s parental rights, alleging she failed to assume parental responsibility, and that her child was in continuing need of protection or services. Brenda entered a no-contest plea to the continuing need ground; the county dismissed the other. The court ultimately concluded Brenda's plea was knowingly and intelligently made. After a contested dispositional hearing, the court terminated Brenda's parental rights.

Brenda filed a post-disposition motion arguing the plea colloquy was deficient because the court failed to adequately inform her of all the potential dispositions and failed to inform her she was waiving her constitutional right to parent. The motion alleged Brenda was unaware of this information. The court denied Brenda's motion without conducting an evidentiary hearing. Brenda appealed, and the Court of Appeals affirmed.

Brenda argues the trial court inadequately informed her of all the potential dispositions set forth in Wis. Stat. § 48.427, which lays out the details and requirements of the termination process. She argues that it was insufficient for the court to simply confirm that she understood only the two primary dispositions set forth at Wis. Stat. §§ 48.427(2) and (3) (providing that either the termination petition would be dismissed or her parental rights would be terminated). She asserts the court was required to confirm her understanding of "the full range of options" specified under the statute.

The Court of Appeals observed that it "would be not merely burdensome, but practically impossible, to convey a full understanding of the court's disposition options upon termination." Thus, the Court of Appeals concluded that "parents must understand they may lose their child as a result of their no contest plea, but need not have a complete understanding of every possible alternative available to the court should it determine termination is in the child's best interest."

In presenting its case to the Court of Appeals, Brown County relied almost entirely on an unpublished decision in Dane County DHS v. James M. (2009AP2038 and 2009AP2039). The county restated much of the Court of Appeals' decision in that case without citation, according to the Court of Appeals.

A decision by the Supreme Court could clarify whether a colloquy for an admission or plea of no contest as to ground for termination of parental rights must include an explanation of dismissal and an explicit waive of a parent's constitutional right to parent a child.

WISCONSIN SUPREME COURT
WEDNESDAY, DECEMBER 1, 2010
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed in part, reversed in part, and remanded a decision by Ashland County Circuit Court, Judge John P. Anderson presiding.

2009AP1559 Boerst v. Henn

In this case, the Supreme Court examines whether "the doctrine of acquiescence" allows mistaken boundaries to become legal boundaries after 20 years of mistaken belief has passed.

Some background: The plaintiffs in this case, Daniel R. Northrop and Kay and Peter S. Boerst, own a parcel of land adjoining a parcel of land owned by the defendants Betty, Floyd, Keith and Pamela Opperman and Connie and Mark Henn.

Until 2005, the parties believed that Henn Road was on the boundary line between their properties. That year, a surveyor found a concrete monument northwest of the intersection which the parties believed formed the boundary between their properties and so informed the county surveyor. The county surveyor believed the monument had been placed after a 1912 survey and marked the true corner common to the sections. The county surveyor recorded a United States Public Land Monument Record Tie Sheet establishing the monument's location as the section corner.

Because this action shifted the boundary line, the plaintiffs filed suit, seeking a declaration that they owned the land between the new section line and Henn Road, land which the parties had all previously believed belonged to the defendants. The defendants responded that the 1912 survey was inaccurate and that Henn Road actually does lie on the section line. In the alternative, the defendants argued that even if Henn Road was not on the true section line, all relevant property owners had treated the road as the boundary line since at least 1917, when the parties to a lawsuit had stipulated that the road was the boundary line.

The circuit court concluded that for nearly a century the property owners adjacent to the road had believed it was the boundary line and had acquiesced to the road being the boundary. Consequently, the circuit court declared the road was the boundary line between the properties.

After that decision, Daniel Northrop, another party seeking to recover land affected the county surveyor's section corner restoration, asked the court to determine whether the corner lot was lost or obliterated. If a corner is lost, the surveyor should relocate it using mathematical models. If a corner is obliterated, surveyors look to secondary evidence, such as fences or roads, of its location. The plaintiffs argued this issue was irrelevant to whether the parties acquiesced to the road as the boundary. The circuit court ruled on the matter and concluded that the corner was obliterated. The plaintiffs appealed, and the Court of Appeals affirmed in part, reversed in part, and remanded.

The Court of Appeals concluded that the circuit court properly determined that Henn Road was the boundary between the two parcels. The Court of Appeals agreed with the plaintiffs that the circuit court erred when it concluded that the section corner was obliterated.

The plaintiffs contend that the lower courts erroneously held that the doctrine of acquiescence applied, and that the doctrine requires uncertainty about the true boundary line that causes a controversy, which the neighbors choose to resolve by agreeing to a different boundary.

The plaintiffs argue that short of proving adverse possession or acquiescence, owners like the defendants, who are mistaken about their true boundary must rely exclusively on their deed to find it. And, unless they can prove adverse possession, can produce a boundary agreement, or their ownership

rests on an ambiguous deed, extrinsic evidence of roads and fences is inadmissible to fix their boundary lines.

A decision by the Supreme Court could clarify the doctrine of acquiescence and resolve potentially conflicting prior Court of Appeals' decisions.

WISCONSIN SUPREME COURT
WEDNESDAY, DECEMBER 1, 2010
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Christopher R. Foley, presiding.

2006AP1229 Casper v. Amer. Int. South Ins.
2006AP2512 Casper v. Nat'l Union Fire Ins. Co. of Pittsburgh
2007AP369 Casper v. Nat'l Union Fire Ins. Co. of Pittsburgh

In these cases, resulting from a 2003 traffic accident in Brown Deer, the Supreme Court examines Wisconsin's "direct action" statute and personal liability of a corporate officer.

Some background: Members of the Casper family and a friend were badly injured when their vehicle was rear-ended by a vehicle driven by Mark Wearing. At the time of the accident, Wearing was co-employed by Transport Leasing/Contract, Inc. (TLC) and Bestway Systems, Inc. (Bestway). The truck he was driving had been leased to Bestway by Ryder. Litigation ensued, resulting in three separate appeals. Two of these are now before the Supreme Court.

The first issue presented for review is wholly procedural and involves the question of what constitutes "excusable neglect." The Caspers filed suit against a number of parties, including National Union, as an insurer of one of the driver's co-employers, TLC.

The Caspers served National Union with an authenticated copy of the fifth amended summons and complaint on May 5, 2006. National Union failed to timely answer the amended complaint, and the Caspers promptly moved for default judgment. On June 26, 2006, National Union filed an answer that was six days late and also moved to enlarge time for filing their answer. The circuit court found that National Union's failure to file its answer in a timely manner was "excusable neglect" under Wis. Stat. § 801.15(2)(a). Accordingly, the court granted National Union's motion to enlarge time and denied the Caspers' motion for default judgment. The Caspers ask if it is necessary, in cases of excusable neglect, to have evidence of the actions that caused the neglect or of the reasons why a "carefully structured process to respond to complaints" did not work, if the party failed to timely respond.

The Caspers also ask the Supreme Court to examine if, under Wis. Stat. §§ 632.24 and 631.01(1), a direct action claim against an insurer can be maintained where the insurance policy was not delivered or issued for delivery in Wisconsin but the insurance policy covers the insured "business operations" conducted in this state.

The other petition raises a novel question about the personal liability of a corporate officer – in this case, Jeffrey Winhem, the CEO of Bestway, one of the employers of the driver. The Caspers' contend that Wenham is personally liable in negligence for approving the route that Wearing was driving the day of the accident, knowing that the route could not be safely completed pursuant to federal regulations.

Initially, the circuit court granted Wenham's motion for summary judgment, dismissing all of the Caspers' claims against Wenham as an individual. The Caspers filed a motion for reconsideration. On reconsideration, the circuit court reinstated the negligence claim against Wenham, agreeing with the Caspers that it had erred in finding that there was no evidence or testimony that Wenham personally approved the route. Wenham appealed, and the Court of Appeals affirmed.

Wenham asks the Supreme Court to review two issues:

1. Can a corporate officer be held personally responsible for negligence that occurs while he is performing his job and is within the scope of his employment for a solvent and insured corporation?

2. Do public policy factors and a lack of foreseeability preclude a finding of negligence on the part of Jeffrey Wenham as a matter of law?